



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 9, 2003

Mr. Thomas H. Arnold  
City Attorney  
City of Texarkana  
P. O. Box 1967  
Texarkana, Texas 75504

OR2003-3142

Dear Mr. Arnold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180793.

The Texarkana Police Department (the "department") received a request for copies of "e-mails on city e-mail accounts that were received and sent from Chief Danny Alexander and Acting Capt. Pat McElhiney to each other or other employees of the city." You indicate that you have provided the requestor with some responsive information. You claim that a portion of the requested information is not subject to the Public Information Act (the "Act"). In the alternative, you claim that this information, as well as the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.024, 552.101, 552.102, 552.108, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>2</sup>

You claim that the information that you submitted to us as Tab 7 is not subject to disclosure under the Act. Section 552.021 of the Government Code provides for public access to "public information." See Gov't Code § 552.021. Section 552.002(a) defines "public information" as:

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<sup>1</sup> We note that section 552.024 is not an exception to disclosure under the Act. Accordingly, we do not address whether any portion of the requested information is excepted from disclosure pursuant to section 552.024 of the Government Code.

<sup>2</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. In addition, section 552.001 states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a). Based on our review of your representations and the information submitted to us as Tab 7, we agree that no portion of this information is collected, assembled, or maintained in connection with the transaction of official department business by or for the department. Accordingly, we conclude that the entirety of Tab 7 is not subject to the Act and need not be disclosed to the requestor. *See* Gov't Code § 552.002(a).

You also claim that the information that you submitted to us as exhibits C1 and C2 of Tab 1 contains medical record information that is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA provides that "a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter." Occupations Code § 159.002(b). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See id.* § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). Accordingly, the medical record information that we have marked within exhibits C1 and C2 of Tab 1 may only be disclosed in accordance with the access provisions of the MPA. *See* Occ. Code §§ 159.002, .004; *see also* Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). Absent the applicability of an MPA access provision, we conclude that the department must withhold this marked information pursuant to the MPA.

In addition, you claim that the information that you submitted to us as exhibits A1 through B1 and D1 of Tab 1 and as Tab 2 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception protects information that another statute makes confidential. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained as part of the officer’s civil service file and another that the police department may maintain for its own internal use. *See* Local Gov’t Code § 143.089(a), (g). The officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer’s supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer’s civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the police department to maintain for its own use a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department’s use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director’s designee a person or agency that requests information that is maintained in the fire fighter’s or police officer’s personnel file.

*Id.* § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer’s personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949 (concluding that “the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)”); *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet. h.) (restricting confidentiality under section 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You inform us that the City of Texarkana has adopted a civil service system for its police officers under chapter 143 of the Local Government Code. You contend that none of the information at issue is subject to section 143.089(a) of the Local Government Code. You inform us that all of the information in question is contained in the file maintained by the police department for its own internal use and therefore is confidential under section 143.089(g). Based on your representations and our review of the information at issue, we agree that this information is confidential in its entirety under section 143.089(g) of the Local Government Code and therefore is excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.

You also claim that the information that you submitted to as exhibits A1 and B1 of Tab 3 is excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007 provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. *See* Fam. Code § 58.007. Section 58.007 states in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Based on our review of your arguments and the information at issue, we agree that exhibit A1 of Tab 3 constitutes juvenile law enforcement record information pertaining to the alleged delinquent conduct of a child that occurred on or after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct”). Accordingly, we conclude that the department must withhold exhibit A1 of Tab 3 in its entirety pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. However, after carefully reviewing your arguments and the information that you have submitted to us as exhibit B1 of Tab 3, we find that no portion of this information constitutes such identifiable juvenile law enforcement record information. Accordingly, we also conclude that the department may not withhold any portion of exhibit B1 of Tab 3 pursuant to section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

However, you also claim that exhibit B1 of Tab 3, as well as the entirety of the information that you submitted to us as Tab 6, is excepted from disclosure pursuant to section 552.108(a)(1) of the Government Code. Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. See Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the information at issue concerns pending criminal investigations. Based on our review of your representations and this information, we find that the release of the entirety of the information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Accordingly, we conclude that the department may withhold exhibit B1 of Tab 3, as well as the entirety of Tab 6, pursuant to section 552.108(a)(1) of the Government Code.

Further, you claim that the information that you submitted to us as Tab 4 is excepted from disclosure pursuant to sections 552.108(a)(2) and (b)(2) of the Government Code. Sections 552.108(a)(2) and (b)(2) protect records from disclosure pertaining to criminal investigations or prosecutions that have concluded in final results other than convictions or deferred adjudications. See Gov't Code §§ 552.108(a)(2), (b)(2). You state that the information at issue is maintained for internal use in matters relating to law enforcement and investigations which have not yet resulted in convictions or deferred adjudications. Because you state that the information at issue pertains to investigations which have not yet resulted in convictions or deferred adjudications, we cannot conclude that the information at issue relates to cases that have resulted in final conclusions other than convictions or deferred adjudications. Accordingly, we conclude that the department may not withhold any portion of the information that you submitted to us as Tab 4 pursuant to sections 552.108(a)(2) or 552.108(b)(2) of the Government Code.

You also claim that portions of the information that you submitted to us as Tab 10 are excepted from disclosure pursuant to section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." See Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 2002 WL 31026981 (Tex. App.--Austin, Sept. 12, 2002) (No. 03-02-00074-CV). In order for a governmental body to claim this aspect of section 552.108, however, it must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law

enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990). In this regard, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular information would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984).

This office has previously determined that cellular telephone numbers assigned to public officials and employees with specific law enforcement responsibilities are excepted from disclosure pursuant to section 552.108(b)(1). *See* Open Records Decision No. 506 (1988) (applying predecessor statute). Based on our review of your representations and the information that you have submitted to us as Tab 10, we conclude that the department has demonstrated that the cellular telephone numbers that you have highlighted may be withheld pursuant to section 552.108(b)(1) of the Government Code.

Additionally, you claim that the information that you submitted to us as Tab 5 should be excepted from disclosure in its entirety pursuant to section 552.108(b)(1) of the Government Code. This office has also stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibits pattern that reveals investigative techniques, information is excepted under section 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

However, again, in order for a governmental body to claim this aspect of section 552.108(b)(1), it must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990). Furthermore, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were different from those commonly known). The decision as to whether disclosure of this type of information would interfere with law enforcement or prosecution is also made on a case-by-case basis.

See Attorney General Opinion MW-381 (1981). Based on our review of your representations and the information that you have submitted to us as Tab 5, we find that the department has adequately demonstrated that the release of the entirety of this information would interfere with law enforcement or crime prevention. See Gov't Code § 552.108(b)(1); see also Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts unless information does so on its face). Accordingly, we conclude that the department may withhold the information that you submitted to us as Tab 5 pursuant to section 552.108(b)(1) of the Government Code.

You also claim that the information that you submitted to us as exhibits C1 and C2 of Tab 1, exhibit A1 of Tab 4, Tab 8, and exhibits B1 and C1 of Tab 9 are excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code in conjunction with the common-law right to privacy. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Section 552.102(a) is generally applicable to information relating to a public official or employee. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected from disclosure under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected from disclosure under the common-law right to privacy as incorporated by section 552.101 of the Government Code. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Accordingly, we address the department's section 552.102 claim under section 552.101 of the Government Code.

Information is protected from disclosure under the common-law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. See *id.* at 683. This office has long held that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure pursuant to the common-law right to privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 at 5 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Prior decisions of this office have also found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but

that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. *See* Open Records Decision Nos. 600 (1992) (finding designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care related to personal financial decisions), 545 (1990) (finding information relating to deferred compensation plan, individual's mortgage payments, assets, bills, and credit history excepted from disclosure under common-law privacy), 523 (1989). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992).

We have marked some personal financial information contained within the information that you submitted to us as Tab 8 that is protected from disclosure under the common-law right to privacy and is, thus, excepted from disclosure pursuant to section 552.101. However, after carefully reviewing your representations and the remaining information contained within the information at issue, we find that no portion of this information is protected from disclosure under the common-law right to privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (statutory predecessor applicable when information would reveal intimate details of highly personal nature), 405 at 2 (1983) (manner in which employee performed his job cannot be said to be of minimal public interest), 400 at 5 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy). Accordingly, we conclude that the department may not withhold any portion of this information under section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that social security numbers that are contained within the information that you submitted to us as exhibits C1 and C2 of Tab 1 are excepted from disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. *See* Gov't Code § 552.117(2). Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we conclude that the department must withhold the social security numbers that we have marked within exhibits C1 and C2 of Tab 1 pursuant to section 552.117(2) of the Government Code. *See* Open Records Decision No. 670 at 5-6 (2001) (governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and



information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies").

You also indicate that a portion of the information that you submitted to us as exhibit A1 of Tab 9 is excepted from disclosure pursuant to section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(1)*. However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 for the information was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Accordingly, we conclude that the department must withhold the information that we have marked within the information that you submitted to us as exhibit A1 of Tab 9 pursuant to section 552.117(1) of the Government Code, if the employee with whom this information is associated timely elected confidentiality for this information in accordance with section 552.024 of the Government Code prior to the time that the department received the present request for information.

We note that the information that you submitted to us as exhibit A1 of Tab 4 contains a social security number that may be confidential under section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that this number is confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the department should ensure that it was not obtained and is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that the information that you submitted to us as exhibit A1 of Tab 4 contains some motor vehicle information that is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130*. Accordingly, we conclude that the department must withhold the Texas motor

vehicle information that we have marked within the information that you submitted to us as exhibit A1 of Tab 4 pursuant to section 552.130 of the Government Code.

In summary, the department need not release Tab 7 to the requestor as the entirety of that information is not subject to the Act. Absent the applicability of an MPA access provision, the department must withhold the information that we have marked within exhibits C1 and C2 of Tab 1 pursuant to the MPA. The department must withhold exhibits A1 through B1 and D1 of Tab 1, as well as the entirety of Tab 2, pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department must withhold exhibit A1 of Tab 3 in its entirety pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. The department may withhold exhibit B1 of Tab 3, as well as the entirety of Tab 6, pursuant to section 552.108(a)(1) of the Government Code. The department may withhold the highlighted cellular telephone numbers contained within Tab 10, as well as the entirety of Tab 5, pursuant to section 552.108(b)(1). The department must withhold the information that we have marked within Tab 8 pursuant to sections 552.101 and 552.102 of the Government Code in conjunction with the common-law right to privacy. The department must withhold the social security numbers that we have marked within exhibits C1 and C2 of Tab 1 pursuant to section 552.117(2) of the Government Code. The department must withhold the information that we have marked within exhibit A1 of Tab 9 pursuant to section 552.117(1), if the employee with whom this information is associated timely elected confidentiality for this information in accordance with section 552.024 of the Government Code prior to the time that the department received the present request for information. A social security number that is contained within exhibit A1 of Tab 4 may be confidential under federal law. The department must withhold the Texas motor vehicle information that we have marked within exhibit A1 of Tab 4 pursuant to section 552.130 of the Government Code. The department must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

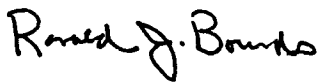
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 180793

Enc. Marked documents

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